

# BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Leno, et al.	AB 43

## SUBJECT

Religious Freedom And Civil Marriage Protection Act/Gender-Neutral Marriage

## SUMMARY

This bill would change the definition of marriage to a civil contract between two persons.

## PURPOSE OF BILL

According to the author's staff, the purpose of this bill is to end discrimination against same-sex couples and to ensure that the rights and responsibilities of spouses are secured without regard to gender.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative as of January 1, 2008.

## ANALYSIS

### FEDERAL/STATE LAW

Current federal law, under the Defense of Marriage Act (DOMA), defines marriage for federal purposes as a legal union between a man and a woman as husband and wife and uses the term spouse to refer only to a person of the opposite sex who is a husband or a wife. In addition, this Act provides that no state is required to give effect to any public act, record, or judicial proceeding of another state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of that state. Federal tax law provides that a husband and a wife may file a joint income tax return.

State law, under the Family Code, defines marriage as a personal relation that arises out of a civil contract between a man and a woman. All real or personal property, wherever situated, that is acquired by a married person during the marriage while domiciled in California is considered community property. By application of community property rules for income tax purposes, each spouse is taxable on one half of the income that is considered community property income. In 2003, California enacted the California Domestic Partner Rights and Responsibilities Act (Goldberg, Stats. 2003, Ch. 421) that extends, with certain exceptions, the rights and duties of marriage to persons registered as domestic partners with the Secretary of State. Operative January 1, 2005, this act gives registered domestic partners (RDPs) generally the same rights, protections, and benefits as married persons. This act also makes RDPs subject to generally the same responsibilities, obligations, and duties as imposed upon married persons.

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However, this act required RDPs to use the same filing status on their California income tax return as was used for federal income tax purposes. Effective for taxable years beginning in 2007, RDPs will be required to file a California personal income tax return jointly or separately by applying the standards applicable to married couples under federal income tax law. (Migden, Stats. 2006, Ch. 802)

For federal income tax purposes, RDPs use the filing status of single or head of household, as applicable.

Under federal and state income tax law, spouses who file a joint tax return are each responsible for the accuracy of the return and for the full tax liability for that tax year. These obligations apply regardless of which spouse earns the income. The concept of obligating each spouse separately for all of the tax liability reflected on the joint return is called joint and several liability. Under certain circumstances individuals who file joint returns may be eligible for relief from joint and several liability.

### THIS BILL

This bill would do the following:

- Amend the definition of marriage under the Family Code from a personal relation arising out of a civil contract between a man and a woman to a personal relation arising out of a civil contract between two persons,
- Construe gender-specific terms to be gender-neutral where necessary to implement the rights and responsibilities of spouses, and
- Provide that a priest, minister, or rabbi of any religious denomination or an official of any nonprofit religious institution authorized to solemnize marriages are not required to solemnize any marriage in violation of his or her right to the free exercise of religion guaranteed by the First Amendment of the U.S. Constitution and provisions of the California Constitution.

### **LEGISLATIVE HISTORY**

SB 105 (Migden, 2007/2008) would clarify and resolve issues relating to the new California Registered Domestic Partner (RDP) personal income tax filing requirement. This bill is currently in the Senate for concurrence.

AB 849 and AB 19 (Leno, et al., 2005/2006) proposed the Religious Freedom and Civil Marriage Protection Act and contained identical language as this bill. AB 19 was held in the Assembly. AB 849 was vetoed by Governor Schwarzenegger. The Governor stated: "I do not believe the Legislature can reverse an initiative approved by the people of California," in reference to Proposition 22 relating to marriage passed by the voters in 2000. The Governor's veto message is attached as Appendix 1.

SB 1827 (Migden, Stats. 2006, Ch. 802) requires RDPs to file personal income tax returns as either married filing joint or married filing separate.

AB 205 (Goldberg, Stats. 2003, Ch. 421) gave RDPs the same rights, such as community property rights, and obligations that are granted to and imposed upon spouses in a civil marriage, with some exceptions.

## **OTHER STATES' INFORMATION**

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota, and New York*. The laws of these states were reviewed because their tax laws are similar to California's income tax laws. These states have no provisions allowing marriage between same-sex couples, except for *Massachusetts*.

For tax periods ending on or after May 16, 2004, *Massachusetts* recognizes the right of same-sex couples to be married. As a consequence, same-sex spouses must file *Massachusetts's* income tax returns as married filing joint or married filing separate.

## **FISCAL AND ECONOMIC IMPACT**

In its current form, this bill would not impact the state's income tax revenue or the Franchise Tax Board's administration of state income tax because it would not change the manner in which taxpayers currently file income tax returns for California purposes.

## **VOTES**

Assembly Floor – Ayes: 42, Noes: 34

Senate Floor – Ayes: 22, Noes: 15

## **LEGISLATIVE STAFF CONTACT**

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## APPENDIX I

BILL NUMBER: AB 849

VETOED DATE: 09/29/2005

To the Members of the California State Assembly:

I am returning Assembly Bill 849 without my signature because I do not believe the Legislature can reverse an initiative approved by the people of California.

I am proud California is a leader in recognizing and respecting domestic partnerships and the equal rights of domestic partners. I believe that lesbian and gay couples are entitled to full protection under the law and should not be discriminated against based upon their relationships. I support current domestic partnership rights and will continue to vigorously defend and enforce these rights and as such will not support any rollback.

California Family Code Section 308.5 was enacted by an initiative statute passed by the voters as Proposition 22 in 2000. Article II, section 10 of the California Constitution prohibits the Legislature from amending this initiative statute without a vote of the people. This bill does not provide for such a vote.

The ultimate issue regarding the constitutionality of section 308.5 and its prohibition against same-sex marriage is currently before the Court of Appeal in San Francisco and will likely be decided by the Supreme Court.

This bill simply adds confusion to a constitutional issue. If the ban of same-sex marriage is unconstitutional, this bill is not necessary. If the ban is constitutional, this bill is ineffective.

Sincerely,

Arnold Schwarzenegger